

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

AMERICAN BUILDERS AND,
CONTRACTORS SUPPLY CO., INC.,

Plaintiff,

v.

S&S, LLC; SAEZ & SONS, LLC; AND
JUAN A. SAEZ,

Defendants,

C.A. No. CPU6-22-000181

Submitted: May 2, 2023

Decided: July 6, 2023

Jonathan Stemerman, Esquire
1007 North Market Street, 3rd Floor
Wilmington, DE 19801
Attorney for Plaintiff

Juan A. Saez
1103 N. Village Loop
Lewes, DE 19958
Defendant/Pro Se

DECISION ON MOTION TO APPEAL COMMISSIONER’S RECOMMENDATION

On March 20, 2023, Juan A. Saez (“Defendant”) appealed the Commissioner’s Recommendation to grant Plaintiff’s Motion for Default Judgment as to Defendant for his failure to complete the Pre-Trial Worksheet and appear at the Pre-Trial Conference. For the reasons discussed below, the Commissioner’s Findings of Fact and Recommendation (“Recommendation”) REJECTED in part and ACCEPTED in part and entered as the ORDER of the Court.

PROCEDURAL AND FACTUAL HISTORY

On March 18, 2022, Plaintiff filed a claim against S&S LLC (“S&S”); Saez and Sons LLC, (Saez and Sons”) and Juan A. Saez (“Saez”) for a breach of contract. Plaintiff asserts they are a Wisconsin company incorporated in Delaware.¹ Plaintiff asserts S&S is a Delaware corporate entity located in Milton, Delaware.² Plaintiff asserts Saez & Sons is a Delaware corporate entity located in Milton and is an alter ego of S&S.³ Finally, Plaintiff asserts Saez is a Delaware resident and owner of both S&S and Saez & Sons.⁴

Defendants entered a contract with Plaintiff on or about July 19, 2018, in which Defendants signed Plaintiff’s Credit Agreement and Guaranty (“Agreement”).⁵ Under terms and conditions of the Agreement, Plaintiff promised to extend credit to S&S on certain terms and conditions.⁶ Saez executed a continuing guaranty and agreed personally to guarantee all debt incurred by S&S to Plaintiff under the Agreement.⁷ Section 2 Continuing Guaranty states:

“I, the undersigned understand the information furnished you is for the purpose of obtaining credit from your company, that I am authorized in my capacity to bind my company accordingly.”⁸ “I, the undersigned, hereinafter referred as guarantors, do jointly, severally, and unconditionally guarantee and promise to promptly pay when due any and all indebtedness of Buyer to ABC, together with any late payment charge that may accrue thereon, regardless of how much indebtedness is incurred, whether such indebtedness is

¹ Complaint ¶ 1.

² Complaint ¶ 2.

³ Complaint ¶ 3.

⁴ Complaint ¶ 4.

⁵ Complaint ¶ 5.

⁶ *Id* and Plaintiff’s Exhibit A.

⁷ Complaint ¶ 6

⁸ Plaintiff’s Exhibit B.

direct or indirect, absolute or contingent, due or become due, or exists now or arises hereafter.”⁹ “In addition, the Guarantor(s) agree to pay all costs of collection, legal expenses and attorney’s fees paid or incurred by ABC in the collection of Buyer’s indebtedness and in enforcing this Continuing Guaranty.”¹⁰

Pursuant to the Agreement, and in reliance thereon, Plaintiff supplied materials to S&S.¹¹ Plaintiff provided invoices to S&S for the materials and S&S failed to pay Plaintiff in the amount of \$33,023.23, exclusive of interest.¹² Plaintiff provided a schedule of invoices with balances due as of September 30, 2021, including late charges.¹³ Plaintiff asserts they incurred over \$1500 in legal fees and expenses with respect to collection of this matter.¹⁴ Plaintiff acknowledges Saez & Sons is not a signatory to the Agreement; however Plaintiff asserts Saez & Sons is the alter ego of S&S; Saez is the common owner of both corporate entities; and several, if not all, payments made to Plaintiff for debts were made by Saez & Sons.¹⁵

Plaintiff brought several claims against Defendants: breach of the Agreement against S&S and Saez and Sons, breach of the invoices against S&S and Saez & Sons, breach of contract against Saez, Quantum Meruit against S&S and Saez & Sons.¹⁶ Plaintiff seeks this honorable Court to enter judgment in its favor against Defendants, jointly and severally, in the amount of \$33,023.23, plus pre- and post-judgment interest, and attorney’s fees and costs.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complaint ¶ 8.

¹² Complaint ¶¶ 9 -10.

¹³ Plaintiff’s Exhibit C.

¹⁴ Complaint ¶ 11.

¹⁵ Complaint ¶ 12.

¹⁶ Complaint ¶¶ 19 -23 , 24 – 27 and 28 – 34.

Saez filed an Answer on April 29, 2022. Saez asserted he made efforts to pay the balance; however, due to the COVID pandemic, he would have to pay late.¹⁷ Saez asserts Plaintiff was not willing to work with his company to rectify the situation and he was just asking for time to pay.¹⁸ On June 28, 2022, the Court sent Saez a letter informing him that S&S is a limited liability company.¹⁹ The Court advised Saez that, in Delaware, a business entity can only act before a State court through an agent duly licensed to practice law in the State.²⁰ The Court directed Saez to retain an attorney licensed to practice law in the State of Delaware within 30 days. On October 20, 2022, the Court sent a letter to Plaintiff advising that more than six months had passed since the last action was taken in this case. The Court advised that, if the case continued to be inactive for another 30 days, it would be dismissed.²¹

On November 14, 2022, Plaintiff filed a Direction of Entry of Default Against Defendants to the Clerk of the Court.²² Plaintiff requested judgment by default be entered *in personam*, jointly and severally against Defendants S&S and Saez and Sons (the LLC defendants) because they had failed to appear, plead, or otherwise defend as provided by Court of Common Pleas Civil Rule 55(b)(1).²³ Plaintiff asserted the amount due includes: \$33,023.23 for the principal balance; \$3,923.48 for the default interest; and \$3,240.12 for attorneys' fees and costs for a total of \$40,186.83 with post-judgment interest at the contract rate of 18% per annum until satisfaction of the judgment.²⁴ The Court granted the default judgment against S&S and Saez and Sons for failure

¹⁷ Answer.

¹⁸ *Id.*

¹⁹ Defined under 6 *Del. C.* § 18-101(8).

²⁰ *Spr. Ct. R.* 57(e).

²¹ *Ct. Com. Pl. Civ. R.* 41(e).

²² Plaintiff's Request for Default Judgment.

²³ *Id.*

²⁴ *Id.*

to retain an attorney and failure to submit an Answer on behalf of the corporate entities. The Court awarded Plaintiff \$33,023.23 for the principal; \$3923.23 for other judgment amount; and \$3,240.12 for attorneys' fees for a total judgment amount of \$40,186.83 from S&S and Saez and Sons.

On January 26, 2023, the Court scheduled a pre-trial conference for the remaining Defendant, Saez on February 28, 2023. On October 24, 2023, Plaintiff filed a pre-trial worksheet. On February 28, 2023, Saez failed to appear at the pre-trial conference. On March 1, 2023, the Commissioner issued the Proposed Findings of Fact and Recommendations for Plaintiff's Application for Default Judgment. The Commissioner granted the Default Judgment finding Saez failed to appear for the pre-trial conference, the pre-trial notice stated the terms of the failure to comply with the procedures, and Saez failed to complete the pre-trial worksheet. The notice of the Commissioner's Proposed Findings of Fact and Recommendations was sent to Saez and returned by the United States Postal Office with "Return to Sender." On March 23, 2023, Saez filed a Motion for Reconsideration of the Commissioner's Proposed Recommendation.²⁵ In his letter, Saez stated he could not attend the pre-trial conference because he could not obtain coverage for his school bus route and had no one available to switch shifts with him.²⁶ Saez stated he would like to have a new trial so that he could provide his side and come to a favorable resolution.²⁷

On April 3, 2023, Plaintiff filed an Opposition to Defendant Saez's appeal citing he was aware of the pre-trial and failed to appear. Nor did he file a pre-trial worksheet.²⁸ Plaintiff requested

²⁵ Defendant's Motion for Reconsideration (While Defendant filed a Motion for Reconsideration, the Court will consider this an Appeal).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Plaintiff's Response in Opposition to Defendant Juan A. Saez's Motion for Reconsideration.

the Court accept the Commissioner's Recommendation and Findings of Fact.²⁹ On May 2, 2023, the Clerk sent the Defendant's appeal, the Plaintiff's Response and the Transcript for judicial review.

STANDARD OF REVIEW

A Commissioner's decision to grant a Motion for Default Judgment is case dispositive.³⁰ Appeals from a Commissioner's report regarding case dispositive matters are governed by Court of Common Pleas Civil Rule 112(A)(4).³¹ "That rule provides a Judge of the Court shall make a *de novo* determination of those portions of the report or specified proposed findings of fact or recommendations made by the Commissioner."³² "A Judge may also receive further evidence or recommit the matter to the Commissioner with instructions."³³

"Pursuant to Superior Court Civil Rule 55(b), default judgment may be entered when a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by the Rules."³⁴ Entry of default judgment is a matter within the court's discretion.³⁵ Generally speaking, it is reserved for those occasions when there has been a willful or conscious disregard of the rules of the court.³⁶ Delaware public policy favors deciding

²⁹ *Id.*

³⁰ Ct. Com. Pl. Civ. R. 112(A)(4).

³¹ *Id.*

³² *Platinum Financial Services, Corp. v. Huffman & Huffman*, 2001 WL 155537 at *1 (Del. Super. Oct. 31, 2001).

³³ *Id.*

³⁴ *Long v. Jennings*, 2021 WL 2134854, at *1 (Del. Super. May 25, 2021). Court of Common Pleas Civil Rule 55 mirrors the Superior Court rule.

³⁵ *Id.*

³⁶ *Id.*

cases on the merits rather than technicalities.³⁷ “Rule 55(b)(2) provides that in all cases, a party entitled to a judgment shall apply to the court where the amount claimed is not for a sum certain.”³⁸

DISCUSSION

Plaintiff brought a breach of contract claim against Saez and Sons and S&S (“LLC Defendants”) and Saez. Based on Plaintiff’s assertions, S&S is the Delaware incorporated entity and Saez and Sons is its alter ego. Saez used both names interchangeably. The Court informed Saez, after he filed his Answer on his own behalf, that the LLC Defendants must have a licensed attorney to represent them pursuant to Supreme Court Rule 57(e). As no licensed attorney entered their appearance nor filed an Answer on behalf of the LLC Defendants, the Court entered a default judgment on behalf of Plaintiff for \$40,186.83. Plaintiff proceeded against the remaining Defendant, Saez, based on the Answer he filed with the Court.

Under the Agreement with Plaintiff, Saez signed a continuing guaranty stating he would be personally liable for all indebtedness, including costs to collect debt and attorneys’ fees, personally on behalf of S&S. Saez failed to appear for the pre-trial conference and failed to file the pre-trial worksheet. The Commissioner noted in his Proposed Recommendation and Findings of Fact that the notice states the possible outcomes for failure to comply with filing the worksheet. In Saez’s appeal, he notes he was not able to secure coverage for his school bus routes, and therefore, clearly knew the date of the pre-trial conference. He failed to ask for a continuance of the matter to another date. The Court finds that this is the second time Saez has failed to comply with this honorable Court’s rules. First, he failed to obtain legal counsel for the LLC Defendants and file a response on their behalf. Now, he fails to file the pre-trial worksheet and attend the pre-trial conference. While this Court typically prefers to hear cases on their merits, as stated in the

³⁷ *Id.*

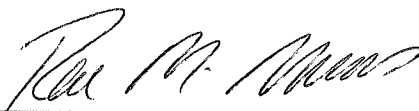
³⁸ *Pinkett v. Nationwide Mutual Ins. Co.*, 832 A.2d 747, 749 (Del. Super. 2003).

rule, when there is willful or conscious disregard for the Court's rules and procedures, a party risks receiving a default judgment against him. Saez received multiple opportunities to have his matters heard before a Judge of this honorable Court. Therefore, the Court holds that default judgment is appropriate in this matter. The Commissioner's Proposed Recommendation and Findings of Fact recommends a default judgment for \$33,023.23 plus prejudgment and post-judgment interest. The Court finds this sum does not match the amount listed in the original default against S&S and Saez and Sons. The amounts should mirror and be joint and several for Defendant Saez.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion for Default Judgment is granted, and the Commissioner's Proposed Recommendation is ACCEPTED in part as to entering a default judgment in favor of Plaintiff against Saez. The Commissioner's Proposed Recommendation is DENIED in part and the amount awarded is \$33,023.23 for the balance; \$3,923.48 for the default interest; and \$3,240.12 for attorney's fees for a total of \$40,186.83 plus post-judgment interest at the contract rate of 18% per annum until satisfaction joint and several with S&S and Saez and Sons.

IT IS HEREBY ORDERED this 6th day of July 2023.

A handwritten signature in dark ink, appearing to read 'Rae M. Mims', is written over a horizontal line.

The Honorable Rae M. Mims
Judge

Cc: Shelly Swafford, Judicial Case Manager Supervisor